

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL
DISTRICT.

OAH Case No. 2016041163

ORDER GRANTING IN PART AND
DENYING IN PART REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND HEARING

On April 26, 2016, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings naming Victor Elementary School District. On April 28, 2016, OAH issued a scheduling order setting dual hearing dates, with an expedited and non-expedited mediation, prehearing conference and hearing. By Order dated May 26, 2016, OAH issued an Order un-expediting the hearing and confirming the dates that had been scheduled for the non-expedited mediation prehearing conference and hearing. On June 3, 2016, the parties filed a joint first request to continue the dates in this matter with the Office of Administrative Hearings, seeking hearing dates in late September, based upon the unavailability of key witnesses through the first half of August, and the pendency of other hearings for counsel and District thereafter. As discussed below, the request is granted in part and denied in part.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

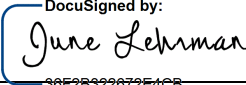
☒ Granted in part to accommodate the unavailability of witnesses through the first half of August. However, the pendency of other OAH hearings currently on calendar does not alone constitute good cause for continuing this one. All dates are vacated. This matter will be set as follows:

Mediation:	June 29, 2016 at 9:30 AM
Prehearing Conference:	August 15, 2016 at 3:00 PM
Due Process Hearing:	August 23, 2016 at 9:30 AM, August 24-25 at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: June 6, 2016

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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings